

106TH CONGRESS
2D SESSION

H. R. 4655

To direct the Secretary of Energy to sell the fossil-fuel and nuclear generation facilities and the electric power transmission facilities of the Tennessee Valley Authority, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2000

Mr. FRELINGHUYSEN (for himself, Mr. FRANKS of New Jersey, Mr. FOLEY, and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of Energy to sell the fossil-fuel and nuclear generation facilities and the electric power transmission facilities of the Tennessee Valley Authority, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tennessee Valley Au-
5 thority Power Competition Act of 2000”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) current consumers of electricity generated
4 by the Tennessee Valley Authority would benefit
5 from the lower costs, reduced pollution, and in-
6 creased efficiencies associated with competition;

7 (2) the United States has encouraged other
8 countries to privatize their government-owned power
9 facilities; and

10 (3) with the emergence of competitive power
11 markets in the United States, the Federal Govern-
12 ment should ensure that its own utilities do not
13 enjoy artificial competitive advantages.

14 (b) PURPOSES.—The purposes of this Act are—

15 (1) to bring the benefits of competition to the
16 consumers of Tennessee Valley Authority power;

17 (2) direct the Secretary of Energy to sell, using
18 a competitive bidding procedure, certain federally
19 owned generation and transmission facilities of the
20 Tennessee Valley Authority; and

21 (3) ensure that power from the Tennessee Val-
22 ley Authority's hydroelectric dams is sold at market
23 rates.

1 **SEC. 3. SALE OF FOSSIL-FUEL AND NUCLEAR GENERATION**
2 **AND ELECTRIC TRANSMISSION FACILITIES.**

3 (a) SALE OF FACILITIES.—In accordance with this
4 Act, the Secretary of Energy (in this Act referred to as
5 the “Secretary”) shall sell the fossil-fuel and nuclear
6 power generation and electric power transmission facilities
7 owned and operated by the Tennessee Valley Authority.

8 (b) COMPETITIVE BIDDING.—

9 (1) IN GENERAL.—In order to ensure that the
10 facilities are transferred in a manner that provides
11 a reasonable payment to the United States, the Sec-
12 retary shall conduct sales under this section using a
13 competitive bidding process open to all bidders—

14 (A) that the Secretary considers to be fi-
15 nancially qualified and to have the experience
16 and resources necessary to manage the trans-
17 ferred facilities; and

18 (B) that are entities incorporated or orga-
19 nized in the United States or United States
20 citizens who reside principally within the United
21 States.

22 (2) MINIMUM BID.—

23 (A) IN GENERAL.—No facility may be sold
24 under this section for an amount less than the
25 minimum bid, as determined by the Secretary
26 in accordance with subparagraph (B).

1 (B) CALCULATION OF AMOUNT.—The min-
 2 imum bid for any facility sold under this section
 3 shall be equal to the net present value of the
 4 outstanding debt attributable to the facility.

5 (c) COOPERATION OF OTHER AGENCIES.—The Ten-
 6 nessee Valley Authority and heads of other affected Fed-
 7 eral departments and agencies shall assist the Secretary
 8 in implementing the sale of facilities under this section.

9 (d) FINANCIAL AND BID MANAGEMENT ADVISOR.—
 10 (1) RETENTION OF ADVISOR.—

11 (A) IN GENERAL.—Not later than 180
 12 days after the date of enactment of this Act,
 13 the Secretary shall retain an experienced pri-
 14 vate sector firm to serve as financial, bid man-
 15 agement, and technical advisor (referred to in
 16 this Act as the “Advisor”) with respect to sales
 17 under this section.

18 (B) FINANCIAL INTEREST.—The Advisor
 19 may not have any substantial financial interest
 20 in—

- 21 (i) the facilities to be sold under this
- 22 section;
- 23 (ii) the operation of such facilities; or
- 24 (iii) the purchasers of such facilities.

1 (2) NOTICE.—Not later than 180 days after the
2 date of enactment of this Act, the Secretary shall
3 publish a notice in the Federal Register soliciting all
4 parties that have an operational or ownership inter-
5 est in facilities to be sold under this section to pro-
6 vide evidence of such interest not later than 90 days
7 after publication of the notice.

8 (3) ADVISOR'S REPORT.—Not later than 180
9 days after being retained by the Secretary, based on
10 information provided by the Tennessee Valley Au-
11 thority and the Secretary and the information ob-
12 tained under paragraph (2), the Advisor shall sub-
13 mit to the Secretary a report containing each of the
14 following:

15 (A) A plan for the competitive sale of all
16 facilities described in subsection (a).

17 (B) An estimate of the net present value of
18 the revenue expected to be derived from each
19 such facility during the 50-year period begin-
20 ning on the date of the report.

21 (C) An estimate of the net present value of
22 the expenses expected to be incurred in connec-
23 tion with each such facility during the 50-year
24 period beginning on the date of the report.

1 (D) An analysis of the relationships among
2 the estimate described in subparagraph (B), the
3 estimate described in subparagraph (C), and
4 the net present value of the outstanding debt
5 attributable to each such facility.

6 (E) An analysis of options for grouping fa-
7 cilities for sale under this section so as to real-
8 ize the greatest return to the United States.

9 (4) STRUCTURE OF SALES.—The plan sub-
10 mitted under paragraph (3)(A) shall provide for—

11 (A) the sale of facilities in a manner that
12 ensures that the United States receives a rea-
13 sonable payment for each sale; and

14 (B) subject to subparagraph (A), the sale
15 of facilities by project, unless the Advisor pro-
16 vides satisfactory information to the Secretary
17 that an alternative structure is in the interests
18 of the United States.

19 (e) COSTS OF SALES.—

20 (1) IN GENERAL.—The Secretary may use not
21 more than \$15,000,000 from unobligated balances
22 available to the Department of Energy for the costs
23 of preparing for and conducting the sale of facilities
24 under this section.

1 (2) REPORT TO CONGRESS.—Not later than 60
2 days after the completion of the sale of all facilities
3 under this section, the Secretary shall transmit to
4 the Committee on Transportation and Infrastructure
5 of the House of Representatives, and to the Com-
6 mittee on Environment and Public Works of the
7 Senate, an accounting of all costs described in para-
8 graph (1) and any studies prepared by the Secretary
9 related to such costs.

10 (f) PROCEEDS OF SALES.—

11 (1) IN GENERAL.—The proceeds of any sale of
12 facilities under this section shall be applied by the
13 Secretary as follows:

14 (A) First, to offset the costs of carrying
15 out the sale.

16 (B) Second, to pay the outstanding debt
17 attributable to such facilities.

18 (2) REMAINING FUNDS.—Any proceeds remain-
19 ing after the payment of costs under paragraph (1)
20 shall be deposited in the Treasury of the United
21 States as miscellaneous receipts.

22 (g) TREATMENT OF SALES FOR PURPOSES OF CER-
23 TAIN LAWS.—The sale of facilities under this Act shall
24 not be considered a disposal of Federal surplus property
25 under the following provisions of law:

1 (1) Section 203 of the Federal Property and
2 Administrative Services Act of 1949 (40 U.S.C.
3 484).

4 (2) Section 13 of the Surplus Property Act of
5 1944 (50 U.S.C. App. 1622).

6 (h) CONTRACTS, OBLIGATIONS, AND LAWSUITS.—

7 (1) IN GENERAL.—Each sale under this section
8 shall be subject to all contracts, debt obligations to
9 non-Federal entities, operational objectives, and
10 other binding agreements that apply, as of the date
11 of such sale, to the facilities sold and to the sale of
12 electric power from such facilities.

13 (2) ASSUMPTION.—The purchasers of facilities
14 sold under this section shall assume all liabilities
15 and obligations of the Tennessee Valley Authority
16 under the contracts, obligations, or other agreements
17 described in paragraph (1).

18 (3) NEW CONTRACTS AND OBLIGATIONS.—After
19 the date of enactment of this Act, the Tennessee
20 Valley Authority may not, with respect to any facil-
21 ity to be sold under this section, enter into any long-
22 term agreement, contract, or other long-term obliga-
23 tion or responsibility, unless such agreement, con-
24 tract, obligation, or responsibility enhances or main-
25 tains the value of such facility.

1 (4) LAWSUITS.—

2 (A) IN GENERAL.—After the sale of any
3 facility under this section, the Tennessee Valley
4 Authority shall retain the responsibility for con-
5 cluding any lawsuits associated with the facility,
6 whether acting as a plaintiff or a defendant.

7 (B) TRANSFER OF CERTAIN RIGHTS, TI-
8 TLES, AND INTERESTS.—Any right, title, or in-
9 terest held by the United States at the conclu-
10 sion of a lawsuit described in subparagraph (A)
11 and which, but for the lawsuit, would have been
12 transferred as part of a sale of a facility under
13 this section, shall be transferred to the party in
14 interest who purchased the facility.

15 (i) REPORT TO FEDERAL ENERGY REGULATORY
16 COMMISSION.—Not later than 180 days after the date of
17 enactment of this Act, the Secretary shall provide to the
18 Federal Energy Regulatory Commission each of the fol-
19 lowing:

20 (1) A description of—

21 (A) each of the assets, tangible or intan-
22 gible, that comprise each facility to be sold
23 under this section;

24 (B) the existing terms of operation with
25 respect to each such facility; and

1 (C) any other interest being proposed for
2 sale.

3 (2) The information related to such facilities re-
4 quired by subparts B, F, and G (other than exhibit
5 E of subpart G) of title 18, Code of Federal Regula-
6 tions.

7 (3) Information regarding the date on which an
8 offer for purchase of such facilities must be sub-
9 mitted.

10 (j) NOTICE OF SALE AND SOLICITATION OF BIDS.—
11 Not later than 1 year after the date of the enactment of
12 this Act, the Secretary shall publish a notice in the Fed-
13 eral Register that includes each of the following:

14 (1) A description of—

15 (A) each of the assets, tangible and intan-
16 gible, that comprise each facility to be sold
17 under this section;

18 (B) the existing terms of operation with
19 respect to each such facility; and

20 (C) any other interest being proposed for
21 sale.

22 (2) Information regarding the date, time, and
23 conditions for the submission of bids for facilities
24 sold under this section.

1 (k) COMPLETION OF SALES.—The Secretary shall
2 complete all sales under this section not later than 180
3 days after the publication of notice under subsection (j).

4 (l) EMPLOYEES.—As a condition of the purchase of
5 each facility under this section, the Secretary shall require
6 each purchaser to provide assurances that the purchaser
7 will, consistent with good business practices, attempt to
8 offer employment to those former employees of the United
9 States who are necessary to the continued operation of the
10 facility.

11 (m) FEDERAL ENERGY REGULATORY COMMISSION
12 JURISDICTION.—All rates and charges established for the
13 wholesale sale of electric power from facilities sold under
14 this section shall be subject to part 2 of the Federal Power
15 Act.

16 **SEC. 4. MARKET-BASED RATES FOR HYDROELECTRIC**
17 **POWER.**

18 (a) IN GENERAL.—Not later than 1 year after the
19 date of enactment of this Act, the Secretary shall develop
20 and implement procedures to ensure that all power pro-
21 duced by hydroelectric dams owned by the Tennessee Val-
22 ley Authority is sold at prices that reflect the demand for
23 and the supply of such power in the relevant bulk power
24 supply market.

1 (b) BID AND AUCTION PROCEDURES.—The Secretary
2 shall establish by regulation bid and auction procedures
3 to implement subsection (a) with respect to hydroelectric
4 power sold under any power sale contract entered into by
5 the Tennessee Valley Authority after the date that is 1
6 year after the date of enactment of this Act, including re-
7 marketed power that has been declined by a party entitled
8 to purchase it.

9 (c) USE OF REVENUE.—

10 (1) IN GENERAL.—

11 (A) OFFSET OF COSTS.—Out of revenue
12 collected under procedures described in sub-
13 section (b), the Secretary shall remit to the Sec-
14 retary of the Treasury amounts (as determined
15 by the Secretary with the approval of the Fed-
16 eral Energy Regulatory Commission) to cover
17 the costs of—

18 (i) all power-related operations and
19 maintenance expenses associated with the
20 Tennessee Valley Authority’s hydroelectric
21 facilities;

22 (ii) compliance with all legal obliga-
23 tions (including treaty obligations) with re-
24 spect to fish and wildlife; and

1 (iii) project investments related to
2 power production, including repayment of
3 the U.S. Treasury for appropriated invest-
4 ments.

5 (B) REMAINING REVENUE.—Any revenue
6 collected under procedures described in sub-
7 section (b) that is not remitted under subpara-
8 graph (A) shall be remitted to the Secretary of
9 the Treasury for the following uses:

10 (i) 50 percent of such revenue shall be
11 used for the reduction of the Federal debt.

12 (ii) 35 percent of such revenue shall
13 be deposited in the fund established under
14 paragraph (2)(A).

15 (iii) 15 percent of such revenue shall
16 be deposited in the fund established under
17 paragraph (3)(A).

18 (2) FUND FOR ENVIRONMENTAL MITIGATION
19 AND RESTORATION.—

20 (A) ESTABLISHMENT.—

21 (i) IN GENERAL.—There is established
22 in the Treasury of the United States a
23 fund to be known as the Fund for Envi-
24 ronmental Mitigation and Restoration (re-
25 ferred to in this paragraph as the

1 “Fund”), consisting of funds deposited
2 under paragraph (1)(B)(ii).

3 (ii) ADMINISTRATION.—The Fund
4 shall be administered by a Board of Direc-
5 tors consisting of the Secretary, the Ad-
6 ministrator of the Environmental Protec-
7 tion Agency, and the Secretary of the
8 Army, or their designees.

9 (B) USE.—Amounts in the Fund shall be
10 available—

11 (i) to carry out projects described in
12 subparagraph (C); and

13 (ii) to cover all costs incurred in es-
14 tablishing and administering the Fund.

15 (C) PROJECT-SPECIFIC PLANS.—

16 (i) IN GENERAL.—For each hydro-
17 electric project that is used to generate
18 power marketed by the Tennessee Valley
19 Authority, the Board of Directors of the
20 Fund shall develop a project-specific plan
21 to mitigate damage to (and to restore the
22 health of) fish, wildlife, and other environ-
23 mental resources, where such damage is
24 attributable to the construction and oper-

1 ation of the facilities from which power is
2 generated and sold.

3 (ii) USE OF EXISTING DATA, INFOR-
4 MATION, AND PLANS.—In developing plans
5 under clause (i), the Board of Directors, to
6 the maximum extent practicable, shall rely
7 on existing data, information, and mitiga-
8 tion and restoration plans developed by—

9 (I) the Director of the Fish and
10 Wildlife Service;

11 (II) the Administrator of the En-
12 vironmental Protection Agency; and

13 (III) the heads of other Federal,
14 State, and tribal agencies.

15 (D) MAXIMUM AMOUNT.—

16 (i) IN GENERAL.—The Fund shall
17 maintain a balance of not more than
18 \$50,000,000 in excess of the amount that
19 the Board of Directors determines is nec-
20 essary to cover the costs of plans developed
21 under clause (i).

22 (ii) SURPLUS REVENUE FOR DEBT RE-
23 DUCTION.—Amounts allocated to the Fund
24 under paragraph (1)(B)(ii) that, if depos-
25 ited in the Fund, would exceed the max-

imum set forth in clause (i) shall be used
by the Secretary of the Treasury to reduce
the Federal debt.

(3) FUND FOR RENEWABLE RESOURCES.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—There is established
in the Treasury of the United States a
fund to be known as the Fund for Renew-
able Resources (referred to in this para-
graph as the “Fund”), consisting of funds
allocated under paragraph (1)(B)(iii).

(ii) ADMINISTRATION.—The Fund
shall be administered by the Secretary.

(B) USE.—Amounts in the Fund shall be
available—

(i) to reimburse consumers in the re-
gion in which power is marketed by the
Tennessee Valley Authority for that por-
tion of the cost of acquiring power gen-
erated by nonhydroelectric renewable re-
sources that exceeds the market price for
power; and

(ii) to cover all costs incurred in es-
tablishing and administering the Fund.

1 (C) RESOURCES DEVELOPMENT PLAN.—

2 Amounts in the Fund shall be expended only in
3 accordance with a plan, developed by the Sec-
4 retary, that is designed to foster the develop-
5 ment of nonhydroelectric renewable resources
6 that show substantial long-term promise but
7 that are currently too expensive to attract pri-
8 vate capital sufficient to develop or ascertain
9 their potential.

10 (D) MAXIMUM AMOUNT.—

11 (i) IN GENERAL.—The Fund shall
12 maintain a balance of not more than
13 \$25,000,000 in excess of the amount that
14 the Secretary determines is necessary to
15 carry out the plan developed under sub-
16 paragraph (C).

17 (ii) SURPLUS REVENUE FOR DEBT RE-
18 Duction.—Amounts allocated to the Fund
19 under paragraph (1)(B)(iii) that, if depos-
20 ited in the Fund, would exceed the max-
21 imum set forth in clause (i) shall be used
22 by the Secretary of the Treasury to reduce
23 the Federal debt.

24 (d) TREATMENT OF PUBLIC BODIES AND COOPERA-

25 TIVES.—

1 (1) RIGHT OF FIRST REFUSAL.—In auctioning
2 hydroelectric power under this section, the Secretary
3 shall provide to public bodies and cooperatives a
4 right of first refusal to purchase power at market
5 prices.

6 (2) PERMISSIBLE USES OF POWER.—

7 (A) IN GENERAL.—Power purchased under
8 a right of first refusal described in paragraph
9 (1) may be consumed only by the public body
10 or cooperative that purchases it under such
11 right or resold for consumption by the cus-
12 tomers of the public body or cooperative.

13 (B) TRANSMISSION ACCESS.—In accord-
14 ance with regulations issued by the Federal En-
15 ergy Regulatory Commission, public bodies and
16 cooperatives shall have transmission access to
17 power purchased under paragraph (1).

18 (3) COMPETITIVE BIDDING.—Power not pur-
19 chased by a public body or cooperative under para-
20 graph (1) shall be sold to the next highest bidder in
21 a competitive bidding process.

22 (e) TERMINATION OF LONG-TERM POWER CON-
23 TRACTS.—

24 (1) IN GENERAL.—Not later than 1 year after
25 the date of enactment of this Act, the Tennessee

1 Valley Authority shall terminate its long-term con-
2 tracts with distributors and retail customers.

3 (2) FORMER DISTRIBUTORS AND RETAIL CUS-
4 TOMERS.—After the termination of contracts under
5 paragraph (1), the distributors and retail customers
6 that were formerly parties to such contracts may—

7 (A) acquire hydroelectric power under this
8 section;

9 (B) acquire fossil and nuclear generating
10 facilities under section 3; and

11 (C) acquire power from suppliers other
12 than the Tennessee Valley Authority.

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